

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

OFFICE COPY

TRANSCRIPT OF RECORD

United States Court of Appeals for the
District of Columbia

OCTOBER TERM, 1938.

No. 7278

SPECIAL CALENDAR.

375

JAMES J. LAUGHLIN, APPELLANT,

vs.

HOMER S. CUMMINGS, ATTORNEY GENERAL OF
THE UNITED STATES AND JAMES V. BEN-
NETT, DIRECTOR OF THE UNITED STATES
BUREAU OF PRISONS.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.

FILED NOVEMBER 4, 1938

PRINTED NOVEMBER 8, 1938

United States Court of Appeals for the District of Columbia

OCTOBER TERM, 1938.

No. 7278

JAMES J. LAUGHLIN, APPELLANT,

vs.

HOMER S. CUMMINGS, ATTORNEY GENERAL OF
THE UNITED STATES AND JAMES V. BEN-
NETT, DIRECTOR OF THE UNITED STATES
BUREAU OF PRISONS, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.

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United States Court of Appeals for the District of Columbia

a In the District Court of the United States
for the District of Columbia

CIVIL ACTION

File No. 87

JAMES J. LAUGHLIN, *Relator*,

vs.

HOMER S. CUMMINGS, Attorney General of the United States
and

JAMES V. BENNETT, Director of the United States Bureau of
Prisons, *Defendants*.

UNITED STATES OF AMERICA,
District of Columbia. ss:

BE IT REMEMBERED, That in the District Court of the
United States for the District of Columbia, at the
City of Washington, in said District, at the times
hereinafter mentioned, the following papers were
filed and proceedings had, in the above-entitled
cause, to wit:—

1 *Complaint for an Injunction, &c.*

Filed September 2—1938

In the District Court of the United States for the District
of Columbia

CIVIL ACTION

File No. 87

Ex Parte,

JAMES J. LAUGHLIN, 2244 Cathedral Ave *Relator*,

vs.

HOMER S. CUMMINGS, Attorney General of the United States
and

JAMES V. BENNETT, Director of the United States Bureau of
Prisons.

Now comes James J. Laughlin, a citizen of the United
States and respectfully represents and shows to this Hon-
orable Court as follows:

That your relator is a duly qualified Attorney and Counselor at Law, who has and maintains an office in the city of Washington, District of Columbia.

That your relator is a duly qualified member of the Bar of the United States District Court for the District of Columbia, the United States Court of Appeals for the District of Columbia, the District Court of the United States for the Northern District of Georgia and the United States Circuit Court of Appeals for the Fifth Judicial Circuit.

And your relator states and shows to the Court that he has certain clients who are imprisoned in the United States Penitentiary at Atlanta, Georgia, within the jurisdiction of the United States District Court for the Northern District of Georgia, and within the jurisdiction of the United States Circuit Court of Appeals for the Fifth Judicial Circuit, who have solicited and retained the professional services of your relator to institute and prosecute in said courts certain actions, pertaining to various matters affecting the rights, interests and privileges of said clients, which

in the preservation thereof, the right to the assistance of counsel is guaranteed under the Constitution and laws of the United States. That your relator, by virtue of his duly authorized profession as an Attorney and Counselor at Law and membership of the Bar of the Courts aforesaid, is a sworn officer of said courts and he is entitled under the provisions of the Constitution and laws of the United States to communicate with, to, and receive from said clients any and all information pertaining to the matters and interests relating to any and all litigation instituted in said courts, or that may be instituted in said courts, or that is to be transacted in behalf of said clients in or without said courts, as may be necessary to enable your relator to properly perform the services for which he has been retained, in a competent and expeditious manner.

Your relator states and avers to the Court that he has instituted a certain suit in the District Court of the United States, for the Northern District of Georgia, which said suit is now pending in the United States Circuit Court of Appeals for the Fifth Judicial Circuit, the said suit having been instituted in behalf of one of your relator's clients and is entitled Sam R. Beard versus Joseph W. Sanford; that notwithstanding the rights and privileges guaranteed to

said client under the Constitution and laws of the United States, to communicate with, retain and have the assistance of counsel, in any litigation, civil or criminal, to which citizens of the United States may be a party either as plaintiff or defendant, and notwithstanding the rights, privileges and authority vested in your relator by virtue of his profession as a duly qualified Attorney and Counselor at Law, by virtue of which he is a sworn officer of the courts aforesaid, and that under the provisions of the Constitution and laws of the United States he is entitled to communicate with said clients, and that said clients are entitled

3 to communicate with your relator all necessary information pertaining to the transaction of matters for which his professional services has been retained, Joseph W. Sanford Warden of said penitentiary acting or pretending to act by virtue of authority vested in him under rules and regulations allegedly promulgated by Homer S. Cummings, Attorney General of the United States and James V. Bennett, Director of the United States Bureau of Prisons, has refused to permit said clients to communicate necessary information to your relator, and has refused to promptly deliver to said clients messages from your relator relating to matters pertaining to which he has been retained. That the interferences by the said Joseph W. Sanford has retarded litigation and prevented your relator in properly and expeditiously performing the services for which he has been retained.

That your relator states and avers that he has been unable to see or communicate with clients and that clients have been unable to communicate with your relator, until said clients have first signed an agreement between counsel and client prepared by the said Joseph W. Sanford or approved by him, and without the knowledge or consent of counsel, in which said agreement the amount of the fee counsel is to receive is stated and the source from which the money to pay such fee is to be derived; that after counsel has been retained, all communications relative the matters for which counsel has been retained must first be approved by the said Joseph W. Sanford or his junior assistant, one Benjamin Overstreet; that any information contained in any communication from counsel that does not meet the approval of the said Joseph W. Sanford or his

junior assistant the said Benjamin Overstreet, said letters containing said information are returned to counsel; that any information from client to counsel concerning the matters for which counsel has been retained, which does
4 not meet the approval of the said Joseph W. Sanford or his junior assistant, although said information be necessary to a proper handling of the matters to which it pertains, said information is impounded.

Your relator further states and avers to the Court, that on the 26th day of August, 1938, the said Joseph W. Sanford informed your relator that hereafter that when your relator desires to confer with a client at said penitentiary, he will be required to first state to the said Joseph W. Sanford what he, your relator intends to say to his client, the nature of the business for which said client has retained, or desires to retain the professional services of your relator and that he, the said Joseph W. Sanford will be the judge as to whether the matters to be discussed is necessary and material and whether or not said client will be permitted to retain counsel regarding such matters.

That all of the acts herein stated, committed by the said Joseph W. Sanford, were and are being committed under color of his official position as Warden of said penitentiary and are allegedly committed under the direction of the said Homer S. Cummings, Attorney General of the United States and the said James V. Bennett, Director of the United States Bureau of Prisons; that the said Joseph W. Sanford as Warden of said penitentiary is the duly authorized agent and representative of the said Homer S. Cummings and the said James V. Bennett, and the said acts so committed by the said Joseph W. Sanford, are the acts of the said Homer S. Cummings and the said James V. Bennett.

That as a result of said acts committed by the said Joseph W. Sanford, great damages and irreparable injury has been sustained by your relator and great damages and irreparable injury has been sustained by his clients, in that
5 litigation in behalf of said clients has been impeded and delayed and extra expenses and work has been incurred; that a continuation of said acts will result in further irreparable injury and great damages to your relator and his clients; that said acts are in violation of the rights

and privileges of your relator and his clients and without authority of law.

WHEREFORE THE PREMISES CONSIDERED, your relator prays:

1—That a rule issue out of and under the seal of this Honorable Court commanding the said Homer S. Cummings, Attorney General of the United States and the said James V. Bennett, Director of the United States Bureau of Prisons, and each of them to appear before this Honorable Court at a day and time therein specified, to show cause, if any they may have, why an injunction shall not issue restraining the said Homer S. Cummings and the said James V. Bennett, from authorizing, directing or permitting the said Joseph W. Sanford, Warden of said penitentiary, his assistants or any other officer or officers of said penitentiary from enforcing said rules and regulations allegedly promulgated by the said Homer S. Cummings and the said James V. Bennett.

2—That upon a final adjudication of this action a permanent injunction be issued restraining the said Homer S. Cummings, Attorney General of the United States and the said James V. Bennett, Director of the United States Bureau of Prisons from directing the said Joseph W. Sanford, Warden of said penitentiary, his assistants or any other officer or officers of said penitentiary in obtaining the assistance of counsel in any suit pending in any court, or to be instituted in any court, or with the transaction of any matters pertaining to the personal affairs of said inmates;

and the said Homer S. Cummings and the said James
6 V. Bennett be ordered to direct the said Joseph W. Sanford, Warden of said penitentiary to forthwith cease from further interference between counsel and client and from the further enforcement of the rules aforesaid.

3—And for such other and further relief as to the Court may seem just and proper.

JAMES J LAUGHLIN

DISTRICT OF COLUMBIA) ss.

James J. Laughlin being first duly sworn on oath as required by law deposes and says that he has read the above application for an injunction by him subscribed and knows the contents thereof; that the matters therein alleged of his

personal knowledge are true, and as to matters alleged on information and belief he verily believes said matters to be true.

JAMES J LAUGHLIN

Subscribed and sworn to before me this 24th day of September, 1938.

LILLIAN A. TRAMMELL

(Seal)

Notary Public, D. C.

JAMES J. LAUGHLIN

Pro. per

7

Rule to Show Cause

Filed September 24 1938

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*

*

This cause having come on to be heard and after reading application for injunction filed by the relator herein it is by the Court this 24th day of September, 1938

ORDERED that Homer S. Cummings, Attorney General of the United States and James V. Bennett, Director of the United States Bureau of Prisons be and they hereby are commanded to appear in this Court on the 3d day of October, 1938 at ten o'clock A.M. to show cause, if any they have, why the injunction prayed for should not be granted.

By the Court.

ALFRED A. WHEAT

Chief Justice

Marshal's Return

Served a copy of the above rule on the above named Homer S Cummings Attorney General of the U S By serving Robert H Jackson Solicitor General Personally 9-25/38 James V Bennett, Director of the U S. Bureau of Prisons Personally 9/25/38 JOHN B. COLPOYS, U. S. Marshal in and for the Dist. of Columbia By H. C. Allen Deputy U. S. Marshal K

8

Answer of Defendants.

Filed October 3 1938

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*

Come now the Defendants by the United States Attorney, and for their return to the order to show cause why

the injunction should not be granted against them respectfully state that:

I.

The Bill of Complaint fails to state a cause of action upon which relief can be granted.

II.

This court has no jurisdiction of this cause of action attempted to be averred in the Bill of Complaint because:

(a) The Bill of Complaint shows upon its face that the ills complained of and the alleged threatened injury all occurred in the Northern District of Georgia, and not within the jurisdiction of this Court.

(b) That the party charged in the Bill of Complaint to have been responsible for the alleged wrongs and threats is one Joseph W. Sanford, Warden of Atlanta Penitentiary, who resides in the Northern District of Georgia, where service may be had, and is not a resident of this District, and that all legal and equitable relief may be granted by the courts of that forum.

(c) The damages set forth by the Bill of Complaint are purely speculative, prospective and remote, and hence there is no substantial controversy between the parties which is essential before this Court would take jurisdiction.

III.

The Complainant is not entitled to the relief prayed for in the Bill of Complaint nor to any equitable relief because the relief prayed for would be an invasion of the lawful jurisdiction of the defendants as officers of the Department of Justice.

IV.

The relator is not entitled to the relief prayed for in the Bill of Complaint nor to any equitable relief because the Bill shows on its face that the only person, if any, who could be deprived of any alleged constitutional rights, or who could have suffered any purported wrong, is Sam R. Beard, and not this relator.

V.

If required to further answer herein, then and in that event, the defendants admit that the relator is a member of

the Bar of this Court; but that they are without sufficient knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 2 and 3.

The defendants admit that they are informed, believe, and therefore aver that the relator, as alleged in the fourth paragraph, filed a petition for a writ of habeas corpus in behalf of one Sam R. Beard in the District Court for the Northern District of Georgia, Atlanta Division, which said petition was granted by the Honorable E. Marvin Underwood, United States District Judge, on May 16, 1938, returnable on the third day of June 1938, at 10 o'clock A.M.; that thereafter, on to wit, August 3, 1938, the said writ was discharged and the petitioner remanded to the custody of respondent, J. W. Sanford, Warden, United States Penitentiary, Atlanta, Georgia; that thereafter, on August 26, 1938, the relator filed a petition for appeal thereon, which was granted on the same day; that the original record on appeal was filed in and is now pending in the United States Circuit Court of Appeals, Fifth Circuit, but the defendants deny that the said Joseph W. Sanford, Warden, at any time refused to permit Sam R. Beard to communicate any necessary information to relator, or that he refused to promptly deliver messages from relator involving matters of proper communication between attorney and client.

Upon information and belief the defendants deny that relator has been through their, or J. W. Sanford's, efforts unable to see Sam R. Beard until the said Beard had signed the alleged agreement, as alleged in paragraph 5;

10 They admit that they are informed, believe, and therefore aver, that, acting under the laws of Congress vesting in the defendants herein the custody, care, safekeeping, control and management of the Atlanta Penitentiary and its inmates, they require satisfactory information as to the identity of visitors to the said inmates, and information, for the prison records, as to any financial commitments for professional services which may or may not be chargeable to the account of the said inmate;

The defendants are informed, believe, and therefore aver that no legal and proper communication between the relator and the said Beard has been returned or impounded;

They aver that between May 4, 1938, the date upon which relator became counsel for the said Beard, and August 26, 1938, the relator did, in fact, visit and confer with the said Beard thirteen (13) separate times, totalling 15 hours and 35 minutes. In addition thereto, Beard was sent to the United States District Court, Northern District of Georgia, Atlanta, on two occasions, to wit, June 3, 1938, and June 4, 1938, on which occasions relator had extensive contact with the said Beard; and,

That in addition to the above consultations had by Beard, he has had, between June 18, 1937, and April 16, 1938, six consultations totalling 6 hours and 8 minutes with Ellis Klein, Esq., who, defendants have been informed and believe, is attorney for said Beard;

That the said Klein accompanied and was present with relator upon the thirteen occasions when relator visited the said Beard;

That in addition to the above professional service between April 27, 1936, and May 21, 1938, the said Beard was visited by, and conferred with his then Attorney John J.

Sirica, Esq., 17 times, totalling 16 hours and 54 minutes.

Upon information and belief the defendants deny that on the 26th day of August, 1938, or at any other time, the said Joseph W. Sanford informed relator that when he thereafter desired to confer with a client in said penitentiary, he, the relator, would be required to first state what he intends to say to his client, the nature of the business for which retained, and that the said Sanford would be the judge as to the necessity and materiality of the matters, and whether the client would be permitted to retain counsel.

The defendants say that they have been informed, believe, and therefore aver that on August 26, 1938, the relator, after having had four interviews with Beard during the said month, was requested to give some notice of his intention to call in the future, and that the said Sanford then and there suggested to relator, that in his (Sanford's) opinion the relator was imposing upon the officers and the proper administration of the institution by his frequent visits.

V.

Wherefore, having made full and complete return, the said defendants, respectfully pray the Court to dismiss the Bill of Complaint, and enter its order refusing to grant the relief sought thereunder.

DAVID A PINE
United States Attorney.

WILLIAM S. TARVER
Assistant United States Attorney.

DAN M JACKSON,
Special Assistant to the Attorney General.

A. E. GOTTSHALL
Attorney.

DISTRICT OF COLUMBIA) ss

W. T. Hammack, being first duly sworn on oath as required by law, deposes and says that he has read the above answer of defendants to the application for an injunction and knows the contents thereof; that the matters alleged on information and belief he verily believes to be true, and that the matters therein alleged of his personal knowledge are true.

W. T HAMMACK
Acting Director, Bureau of Prisons.

Subscribed and sworn to before me this 1st day of October, 1938.

LORRAINE WALL HURNEY
(Seal) *Notary Public, D. C.*

13

Order

Filed October 4 1938

* * *

This cause came on to be heard at this term upon a rule to show cause and the defendants' answer and it appearing to the Court that it has no jurisdiction to entertain this cause, it is by the Court, this 4th day of October, 1938,

ADJUDGED, ORDERED AND DECREED, that the said complaint be and is hereby dismissed, and the rule to show cause be and is hereby discharged, and judgment is hereby ordered against the relator.

ALFRED A. WHEAT
Chief Justice

14

Notice of Appeal

Filed October 20 1938

* * *

Notice is hereby given this 17th day of October 1938, that James J. Laughlin the relator hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 4th day of October, 1938, in favor of defendants against said relator.

JAMES J LAUGHLIN
Attorney for relator

Memorandum

OCTOBER 25—1938.

Bond on appeal (\$250) filed.

Designation of Record

Filed October 27 1938

* * *

The Clerk will prepare the record in the above entitled cause and include therein the following:

- 1—Complaint
- 2—Rule to show cause.
- 3—Return and answer
- 4—Order dismissing complaint and discharging rule.
- 5—Notice of appeal.
- 6—This designation of record.

JAMES J LAUGHLIN

Service of copy acknowledged this 27th day of October, 1938.

WILLIAM S. TARVER
Assistant United States Attorney.

15 District Court of the United States for the
District of Columbia

UNITED STATES OF AMERICA,
District of Columbia. ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered from 1 to 14, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in Civil Action No. 87, wherein James J. Laughlin, is Relator and Homer S. Cummings, Attorney General of the United States and James V. Bennett, Director of the United States Bureau of Prisons, are Defendants, as the same remains upon the files and of record in said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 3rd day of November, 1938.

CHARLES E. STEWART,
Clerk.

By CHAS. B. COFLIN,
Clerk.
(Seal)

Endorsed on Cover: No. 7278. Laughlin, Appellant, vs. Cummings et al. United States Court of Appeals for the District of Columbia Filed Nov 4—1938 Joseph W. Stewart, Clerk.

United States Court of Appeals

District of Columbia

October Term, 1938.

Special Calendar.

No. 7278

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA
FILED NOV 8 - 1938

Joseph W. Stewart
CLERK

JAMES J. LAUGHLIN,

Appellant,

versus

**HOMER S. CUMMINGS, Attorney General of the
United States,**

and

**JAMES V. BENNETT, Director of the United States
Bureau of Prisons,
Appellees.**

BRIEF ON BEHALF OF APPELLANT.

JAMES J. LAUGHLIN,

**Counsel for Appellant in Proper
Person.**

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**IN THE UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA.**

October Term, 1938.

Special Calendar.

No. 7278.

JAMES J. LAUGHLIN,

Appellant,

versus

**HOMER S. CUMMINGS, Attorney General of the
United States,**

and

**JAMES V. BENNETT, Director of the United States
Bureau of Prisons,**

Appellees.

BRIEF ON BEHALF OF APPELLANT.

This is an appeal from an order of the District Court dismissing a complaint for injunction filed by the appellant against Homer S. Cummings, Attorney General of the United States and James V. Bennett, Director of the United States Bureau of Prisons. The complaint was dismissed solely upon jurisdictional grounds.

The object of the suit was to prevent the Warden of the United States Penitentiary at Atlanta, Georgia, from interfering with the activities of the appellant in his capacity as attorney. The complaint alleged that the said warden was virtually denying prisoners confined in the Atlanta penitentiary access to the courts and in conjunction with his junior assistant was in fact interfering with the civil rights of the inmates confined there. It was pointed out in the complaint that the Warden of the Atlanta penitentiary was acting or pretending to act by virtue of authority vested in him by virtue of rules and regulations allegedly promulgated by Homer S. Cummings, the Attorney General of the United States, and James V. Bennett, Director of the Bureau of Prisons. On this account the suit was brought against the Attorney General and the Director of the Bureau of Prisons. After reading the complaint which appears in the record, Chief Justice Wheat of the District Court of the United States for the District of Columbia signed a rule to show cause directing the Attorney General and the Director of the Bureau of Prisons to appear in Court on October 3, 1938, to show cause why the injunction prayed for should not issue. The record shows that on the return day an answer was filed by the defendants and signed by the following:

David A. Pine, United States Attorney;

William S. Tarver, Assistant United States Attorney;

Dan M. Jackson, Special Assistant to the Attorney General;

A. E. Gottshall, Attorney.

The answer however was verified by W. T. Hammack, Acting Director, Bureau of Prisons. The answer attacked the jurisdiction of the court. After a brief argument Chief Justice Wheat stated that the suit could not be brought in the District of Columbia. The merits of the complaint were not considered and the dismissal was solely upon the ground of jurisdiction as the order shows.

The only question presented in this appeal is: Can this action be maintained in the District of Columbia? It is the contention of appellant that the suit could not be filed in any other part of the United States. It is believed that the controlling statutes and authorities are uniform as to this.

Section 112, Title 28 U. S. C. A. (Section 51 of the Judicial Code) provides:

"Except as provided in sections 113 to 117 of this title, no person shall be arrested in one district for trial in another in any civil action before a district court; and, except as provided in sections 113 to 118 of this title, no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant."

This act was originally passed and approved in 1789 and the wording of it remains virtually unchanged to the present day.

We believe it is only necessary to refer to only one case decided by this Court and it is directly in point. In *Putnam v. Ickes, et al.*, 64 Appeals D. C. 339 (certiorari denied 296 United States 612) this statute was involved.

In that case the plaintiffs sought to bring various defendants within the jurisdiction of the Supreme Court of the District of Columbia (now the District Court of the United States for the District of Columbia) through personal service of summons upon them in the State of California where all the defendants with the exception of the Secretary of Interior resided. Personal service was made upon Secretary Ickes within the District of Columbia. The Court said:

“Section 112, title 28, USCA, Section 51 of the Judicial Code, provides, among other things, as follows: ‘No civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant.’ This statute confines the jurisdiction of actions in personam to the district in which the defendant is an inhabitant and there is no exception to the rule.” Citing *Ladew v. Tennessee Copper Co.*, 218 U. S. 357, and *Seaboard Rice Milling Co. v. C. R. I. and P. Rwy.*, 270 U. S. 363.

In *Seaboard Rice Milling Company v. Chicago, Rock Island and Pacific Railway*, 270 United States 363, the Supreme Court speaking through Mr. Justice Sanford said:

“Section 51 of the Judicial Code which deals with the venue of suits originally begun in the District Courts—reenacting in part a similar provision in the Judiciary Act of 1888 provides subject to certain exceptions not material here, that ‘no civil suit shall be brought in any district court against any person by any original process or proceeding in any other district than that whereof he is an inhabitant; but where the jurisdiction is founded only on the fact that the action is between citizens of different states,

suit shall be brought only in the district of the residence of either the plaintiff or defendant.' That is to say the suit must be brought within the district of which the defendant is an inhabitant, unless the general federal jurisdiction is founded upon diversity of citizenship alone, in which case it must be brought either in that district or in the district in which the plaintiff resides."

In *Shaw v. Quincy Mining Co.*, 145 United States 444, in referring to the Act of 1789 the Court said:

"The word 'inhabitant' in that act was apparently used not in any larger meaning than 'citizen' but to avoid the incongruity of speaking of a citizen of anything less than a State, when the intention was to cover not only a district which included a whole state but also two districts in one state like the Districts of Maine and Massachusetts in the State of Massachusetts, and the districts of Virginia and Kentucky in the State of Virginia established by Section 2 of the same act (citing cases). The same rule has been maintained to the present day and has been held to be unaffected by the Fourteenth Amendment of the Constitution declaring 'all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside.' *Robinson v. Case*, 97 United States 646; *Grace v. American Insurance Company*, 109 United States 278; *Timmons v. Elyton Land Company*, 139 United States 378; *Denny v. Pironi*, 141 United States 121. * * * As to natural persons therefore it cannot be doubted that the effect of this act, read in the light of earlier acts upon the same subject, and of the judicial construction thereof, is that the phrase 'district of the residence of' a person is equivalent to 'district whereof he is an inhabitant' and cannot be construed as giving jurisdiction by reason of citizenship to a

Circuit Court held in a state of which neither party is a citizen, but, on the contrary, restricts the jurisdiction to the district in which one of the parties resides within the State of which he is a citizen and that this act therefore having taken away the alternative, permitted in the earlier acts of suing a person in the district 'in which he shall be found' requires any suit, the jurisdiction of which is founded only on its being between citizens of different states to be brought in the state of which one is a citizen and in the district therein of which he is an inhabitant and resident."

There would seem to be little doubt therefore in the instant case. As a matter of fact service could be lawfully had upon the Attorney General and the Director of the Bureau of Prisons only within the District of Columbia.

In *Standard Stoker Company, Inc. v. Lower, et al.*, 46 Federal (2nd) 678, the Court said:

"It is well settled that for the purposes of Section 51 of the Judicial Code 'citizen,' 'inhabitant' and 'resident' are synonymous terms."

In the instant case it is well to point out that the Chief Justice of the District Court before he signed the rule to show cause read the complaint filed by the appellant and therefore assumed that he had jurisdiction. Appellant contends therefore that the initial step in the determination of the cause was taken. In *Gamble v. Silver Peak Mines, et al.*, (Supreme Court of Nevada) 133 Pacific 936, the Court said:

"It is the primal duty of all courts to keep within their jurisdiction. Whenever a court takes any af-

firmative action there is an implied adjudication that it has jurisdiction to so act."

In *Chicago Bank of Commerce v. Carter*, 61 Federal (2nd) 986, the Court said:

"Every presumption is indulged in favor of jurisdiction once assumed."

It is contended therefore that the action of the District Court of the United States for the District of Columbia in holding that it was without jurisdiction to proceed further in this cause was erroneous and the action of that Court in dismissing the complaint should be reversed.

Respectfully submitted.

JAMES J. LAUGHLIN,

Counsel for Appellant in Proper
Person.

UNITED STATES
COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA
FILED DEC 1-1938

No. 7278—Special Calendar

**In the United States Court of Appeals
for the District of Columbia**

OCTOBER TERM, 1938

JAMES J. LAUGHLIN, APPELLANT

v.

HOMER S. CUMMINGS, ATTORNEY GENERAL OF THE
UNITED STATES, AND JAMES V. BENNETT, DI-
RECTOR, UNITED STATES BUREAU OF PRISONS,
APPELLEES

BRIEF FOR APPELLEES

DAVID A. PINE,
United States Attorney.

WILLIAM S. TARVER,
Assistant U. S. Attorney.

DAN M. JACKSON,
JAMES P. O'BRIEN,
Special Assistants to the Attorney General.

A. E. GOTTSHALL,
Attorney.

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(1)

**In the United States Court of Appeals
for the District of Columbia**

OCTOBER TERM, 1938

No. 7278—SPECIAL CALENDAR

JAMES J. LAUGHLIN, APPELLANT

v.

HOMER S. CUMMINGS, ATTORNEY GENERAL OF THE
UNITED STATES, AND JAMES V. BENNETT, DI-
RECTOR, UNITED STATES BUREAU OF PRISONS,
APPELLEES

*APPEAL FROM ORDER DISMISSING COMPLAINT SEEKING
AN INJUNCTION*

BRIEF FOR APPELLEES

STATEMENT

This action was commenced on September 24, 1938, in the District Court of the United States for the District of Columbia by the filing of a petition for a permanent injunction against Homer S. Cummings, Attorney General, and James V. Bennett, Director of the Bureau of Prisons.

By the petition and the special prayer for relief the appellant sought to restrain the said Attorney General and Director of the Bureau of Prisons

from further permitting or directing Joseph W. Sanford, Warden of the United States Penitentiary, Atlanta, Georgia, to enforce certain alleged rules and regulations against him, contending that as attorney he was entitled to unrestricted communication and conference with inmate Sam Beard and other unnamed inmates. The mentioned rules and regulations are not pleaded, set out, or described either in the pleadings or as exhibits thereto. It is clear, however, from the general allegations of the Bill of Complaint that appellant complains of prospective restrictions upon his contact and commerce with inmate Sam Beard and other undisclosed clients who are inmates of Atlanta Penitentiary.

The court below issued a rule to show cause, the appellees filed an answer, and on October 3, 1938, the court, after carefully reading all pleadings, and after argument, dismissed the action in the following language, to wit:

This cause came on to be heard at this term upon a rule to show cause and the defendants' answer and it appearing to the Court that it has no jurisdiction to entertain this cause, it is by the Court, this 4th day of October 1938,

ADJUDGED, ORDERED AND DECREED, that the said complaint be and is hereby dismissed, and the rule to show cause be and is hereby discharged, and judgment is hereby ordered against the relator.

This appeal is taken from the foregoing order of dismissal.

QUESTION PRESENTED

The appellant asserts that the only question presented is:

Can this action be maintained in the District of Columbia?

The appellees submit that the real question presented is whether the court below correctly decided that it lacked jurisdiction to intervene in a purely administrative and discretionary matter affecting a prisoner undergoing sentence and his counsel.

THE PLEADINGS

In substance the complaint alleges that litigation instituted by appellant in the Fifth Judicial Circuit as attorney for Sam Beard (serving a term of imprisonment in Atlanta Penitentiary) has been retarded; that communication and conference between himself and other undisclosed clients (also inmates of Atlanta Penitentiary) has been impossible without first informing the penitentiary authorities of the services to be rendered by appellant and the fee expected by him; and, that Warden Sanford and his assistants practice such unwarranted interference under instructions and rules promulgated by the Attorney General and the Director of the Bureau of Prisons.

In substance the appellees' answer asserts that the court below lacked jurisdiction to grant relief because:

(a) The alleged injuries occurred in the Northern District of Georgia, where any available legal or equitable relief might be had, and

(b) The damages set forth are entirely prospective and remote, and lacking in any substantial controversy (R. 7).

The answer further asserted that the litigation involving inmate Sam Beard had reached the stage where Beard's appeal¹ from an adverse ruling by the District Court for the Northern District of Georgia in habeas corpus proceedings had been perfected, and denied that Warden Sanford had at any time prevented necessary communication between Beard and the appellant (R. 8), and that the said Warden had in fact permitted thirteen (13) conferences between Beard and the appellant during pendency of the habeas corpus proceedings (R. 9). The answer denied that said Warden had informed the appellant that he (the warden) would require appellant to disclose the nature of any business with inmates in the future before being permitted to see them (R. 9).

ARGUMENT

I

The appellant contends in his brief that—

The merits of the complaint were not considered and the dismissal was solely upon the

¹ This Court will take judicial notice of the fact that on November 5, 1938, the Circuit Court of Appeals for the Fifth Circuit affirmed the ruling of the District Court.

ground of jurisdiction as the order shows.
(Br. 3).

The appellees submit that the recitations contained in the court's order of dismissal may not be impeached by the appellant. That order shows that the court concluded it had "no jurisdiction to entertain this cause," after consideration of the appellees' answer (R. 10). The order itself clearly establishes that the question presented is not restricted to that of the situs of the action, as asserted by the appellant, but on the contrary includes the larger issue involved in the subject-matter of both the complaint and the answer. This subject-matter, as already shown, covers the specific facts upon which the injunction was sought, and denied.

The appellant contends (Br. 6) that the court below assumed that it had jurisdiction by virtue of having read the complaint before issuing the rule to show cause. We submit that in law such procedure is conclusively presumed, but that it does not imply finality and bind the court in advance of examination of the respondent pleadings. While the record does not reflect that the court carefully read and pondered appellees' answer before rendering a decision, such is nevertheless the fact. And it strengthens the proposition that the court disclaimed jurisdiction because the substantive content of the pleadings disclosed no basis for its exercise.

The matter of a court's jurisdiction over a particular cause is always open to question, even on appeal: In *Kentucky v. Powers*, 201 U. S. 1, it was said that this court "must see to it that they (the subordinate courts of the United States) do not usurp authority not affirmatively given to them"—citing *M. C. & L. M. Ry. Co. v. Swan*, 111 U. S. 379. In *Perez v. Fernandez*, 202 U. S. 80, it was said that "where the jurisdiction fails the objection can be raised in this court; if not by the parties, then by the court itself." In accord is *Chi., B. & Q. Ry. Co. v. Willard*, 220 U. S. 413. See also *McNally v. Jackson*, 7 F. (2d) 373 (D. C. E. D. La.) where Judge Beattie said:

I do not see any basis for the jurisdiction of this court. Though there has been no plea or exception to the jurisdiction it is the duty of this court, if a lack of jurisdiction appears, to dismiss the suit on its own motion. This court is of limited jurisdiction.

The case at bar is even stronger; here the answer of the appellees challenged the power of the court below to entertain and adjudicate the *subject-matter* of this action. Only after due and careful consideration by the court was the complaint dismissed and the rule to show cause discharged.

II

It should be borne in mind that this action was not instituted by the inmate Beard, complaining of a denial of the right of representation by counsel,

but by counsel for Beard insisting upon license to transact business with Atlanta penitentiary clients, unnamed, at will and without restriction.

The appellees' sworn answer shows that the appellant had the privilege of free conference with his only disclosed client, Sam R. Beard, whom he interviewed thirteen times between May 4, 1938, and August 26, 1938. This fact alone makes it difficult to rationalize appellant's contention that interference by Warden Sanford has retarded litigation in the Beard case and prevented him from properly and expeditiously performing the services for which he was retained.

Assuming for purposes of argument, but not admitting, that the Warden did actually demand proof from the appellant that the relationship of attorney and client did in fact exist between him and the inmate Beard, and further demanded assurance that the matters sought to be discussed related to legal business between them before permitting the interviews sought, we submit that the Warden was acting within his power and merely performing the duties of his office.

While incarcerated and in lawful custody, prisoners are undergoing punishment for crimes against society and violations of law. By due process of law they have been convicted and sentenced; their previous freedom of social intercourse with free men is abated. They are deprived of the un-

obstructed liberty enjoyed by citizens generally and are, by statute (Title 18, Sec. 753f), committed to the custody and care of the Attorney General. The officials having custody owe the clear duty of protection to the prisoner, *Logan v. United States*, 144 U. S. 263, as well as protection to the public. See also Sec. 753 *et seq.*, Title 18, U. S. C. Congress has vested the Attorney General with power to draft and enforce rules for both purposes. Section 741, Title 18, U. S. C., expressly authorizes the Attorney General to *promulgate* such rules for the government of the officials of said prisons *and prisoners* as he may deem proper and necessary. His office is a public trust, and it is a legal presumption that he will exercise his powers and duties respecting prisoners in his custody, and act with strict impartiality. The exercise of such power and discretion by the promulgation and issuance of rules and regulations is, in its nature, a judicial act, from which there is no appeal and over which the courts have no control (Cooley Const. Limitations, 7 Ed., p. 74).

III

Nowhere in the complaint has the appellant characterized the alleged rules or regulations (which he does not plead) as being arbitrary or capricious. Nor has he cited any judicial declaration to the effect that the legal custodian of a prisoner is not authorized to promulgate and enforce

reasonable regulations for the administration of penal institutions, the conduct and privileges of its inmates, and such restrictions upon outsiders as his discretion may dictate.

To have properly invoked the jurisdiction of the court below, the appellant should have pleaded facts from which the court could have determined judicially that the enforcement of the rules and regulations as to appellant was arbitrary, capricious, or otherwise beyond the authority of the legal custodian of Beard and other Atlanta penitentiary inmates. Regulations of an executive department head, when within his jurisdiction, are not disturbed by the courts unless they are clearly wrong. *Houston et al. v. St. Louis Independent Packing Co.*, 249 U. S. 479, 484; *Milwaukee Social Democratic Publishing Co. v. Burleson, Postmaster General*, 255 U. S. 407, 413.

IV

It is further submitted by appellees that the remedy invoked by the appellant, in so far as it applies to appellant's representation of Beard, has since the institution of this action been disposed of by the Circuit Court of Appeals for the Fifth Circuit, *supra*, p. 4. This cause of action, if any, has therefore become moot.

There is nothing left to adjudicate. Appellant's prayer (R. 5) that appellees be permanently restrained from interfering with the *inmates* of the

penitentiary in "obtaining the assistance of counsel in any suit pending in any court, or to be instituted in any court, or with the transaction of any matter pertaining to the *personal affairs* of said inmates", is so chimerical as not to justify argument and the time of the court.

CONCLUSION

It is respectfully submitted that this court should affirm the order of the lower court in dismissing this cause of action.

Respectfully submitted.

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